

**Lott's Electric Company, Inc. and Net Jersey IBEW Construction Business Managers Association, International Brotherhood of Electrical Workers, AFL-CIO and International Brotherhood of Electrical Workers, AFL-CIO**

**Lott's Electrical Company, Inc. and Gauntt Construction Company, Inc. and New Jersey IBEW Construction Business Managers Association, International Brotherhood of Electrical Workers, AFL-CIO.** Cases 22-CA-14656, 22-CA-14745, and 22-CA-14705

February 12, 1991

# SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On March 15, 1989, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> On November 14, 1989, the United States Court of Appeals for the Third Circuit entered a judgment enforcing in full the Board's Order. A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Acting Regional Director for Region 22 on July 31, 1990, issued a compliance specification and notice of hearing alleging the amount of backpay due each of the six discriminatees, and notifying the Respondent that it must file an answer in conformance with Section 102.56 of the Board's Rules and Regulations, as amended. Subsequently, the Respondent timely filed an answer to the compliance specification. On September 21, 1990, the Regional Director informed counsel for the Respondent that the answer to the compliance specification was deficient under applicable sections of the NLRB Rules and Regulations. The letter further notified the Respondent that if a proper answer to the compliance specification was not received by October 5, 1990, the Regional Office would file a Motion for Partial Summary Judgment. On October 5, 1990, the Respondent filed an amended answer to the compliance specification.

Thereafter, on November 19, 1990, the General Counsel filed a Motion to the Board for Partial Summary Judgment and Memorandum in Support, with exhibits attached. The General Counsel's motion contends that portions of the Respondent's answer and amended answer to the compliance specification are not in compliance with Section 102.56(b) and (c) of the Board's Rules and Regulations. On November 21, 1990, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. On December 12, 1990, the Respondent filed a response. In the response, the Respondent states that it

will not oppose the General Counsel's motion. The Respondent asserts that after reviewing its records and payroll information and Section 102.56(b) and (c) of the Board's Rules and Regulations, "any reduction in backpay as a result of Respondent's allegations in paragraphs 1(b), 1(c) and 1(d) would not justify the expense and time incurred in compiling such data."

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

## Ruling on the Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

On September 21, 1990, the Regional Director wrote to the Respondent's counsel advising that the Respondent's answer did not comply with the Board's Rules and Regulations regarding an answer to a specification.

<sup>1</sup> 293 NLRB 297.

That letter spelled out in detail the insufficiencies, with particular emphasis on the need for providing specific alternative theories of calculation rather than general denials of matters within the Respondent's knowledge. The Regional Director also enclosed a copy of the sections of the Rules and Regulations cited, as well as a citation to the Board's decision in *Heck's Inc.*, 282 NLRB 263 (1986), in which the Board granted the General Counsel's Motion for Partial Summary Judgment in similar circumstances. Further, the Regional Director provided Respondent's counsel an opportunity to file an amended answer, and advised that, in the absence of a proper answer, a Motion for Partial Summary Judgment would be filed. The Respondent timely filed its amended answer.

The General Counsel asserts that the Respondent's answer and its amended answer, taken together, leave paragraphs 2 and 5-10 to be litigated, and paragraphs 1a, 3, and 4 to be partially litigated. Paragraphs 1b, 1c, and 1d have not been answered in accordance with the Board's Rules and Regulations, and Respondent has admitted portions of paragraphs 1a, 3, and 4.

*Paragraph 1a:* This paragraph of the specification alleges that the backpay period for Mark Seltner includes November 3 through 7, 1986, the week of his suspension, and started again on December 19, 1986, the first workday after he was laid off, and ended April 11, 1989, the date he returned to work following the Employer's offer of reinstatement. In its original answer, the Respondent admitted the entire allegation. In its amended answer, the Respondent admitted the dates of Seltner's suspension and initial lay off but claimed that the backpay period should exclude all time after December 31, 1987, as Seltner "would have been laid off for non-discriminatory reasons from that point forward" due to the lack of "residential work" available after that time when the Wilson Homes project ended. The General Counsel seeks, and we grant, summary judgment with respect to the admissions as to the dates of Mark Seltner's suspension and initial layoff contained in Respondent's amended answer to paragraph 1a of the specification.

*Paragraph 1b:* The specification alleges that the backpay period of John Koerner and Barry Galczynski started October 19, 1986, the first workday after they were laid off, and ended April 10, 1989, the date the Employer's bona fide offer of reinstatement was to be effective. In its original answer, the Respondent admitted the entire allegation. In its amended answer, the Respondent admitted the beginning of Koerner and Galczynski's backpay period but claimed for the first time that they "would have been laid off sometime in 1987" because of their seniority ranking and the Respondent's economic condition, and that no further backpay is due after that time "due to a legitimate non-discriminatory lay-off." The General Counsel as-

serts, and we agree, that the amended answer is deficient under the Board's Rules and Regulations. Thus, Respondent did not provide a specific date when the employees would have been laid off, nor did it provide alternative supporting backpay calculations based on the alleged layoff date. Therefore, we grant summary judgment with respect to paragraph 1b of the specification.

*Paragraph 1c:* The specification alleges that the backpay periods for Joseph Carluccio and John Oliver started on October 14 and November 4, 1986, respectively, the first workday after they were discharged, and ended on April 10, 1989, the date the Employer's bona fide offers of reinstatement were to be effective. In its original answer the Respondent admitted the entire allegation. In its amended answer, the Respondent admitted the beginning of backpay periods for Carluccio and Oliver but claimed that they "would have been laid off sometime in 1987" due to their seniority ranking and Respondent's economic condition, and that no further backpay is due after that time "due to a legitimate non-discriminatory lay-off." The General Counsel asserts, and we agree, that Respondent's amended answer is deficient under the Board's Rules and Regulations. Thus, asserting that a layoff would have occurred "sometime in 1987" does not provide the necessary supporting detail including, e.g., the specific date when the employees would have been laid off, nor has the Respondent provided alternative backpay calculations based on the alleged layoff date, which, under the Board's Rules and Regulations, the Respondent's answer must contain. Therefore, we grant summary judgment with respect to paragraph 1c of the specification.

*Paragraph 1d:* The specification alleges that the backpay period for Vito Galati started on October 19, 1986, the first workday after he was discharged, and ended April 10, 1990, the date the Employer's bona fide offer of reinstatement was to be effective. In its original answer and amended answer, the Respondent admitted that Galati's backpay period started on October 19, 1986, the first workday after he was discharged, but denied that a bona fide offer of reinstatement was made to be effective April 10, 1990. The Respondent asserted that a bona fide offer of reinstatement was to be effective on April 10, 1989. In its amended answer, the Respondent pleads that Galati "would have been laid off sometime in 1987" due to his seniority ranking and the Respondent's economic condition and that no further backpay is due after that time "due to a legitimate non-discriminatory lay-off." That portion of the Respondent's amended answer where it is asserted that Galati "would have been laid off sometime in 1987" does not provide the necessary supporting detail to be a sufficient response under the Board's Rules and Regulations. Therefore, we grant

summary judgment as to these allegations in paragraph 1d of the specification. However, the Respondent's response to the allegation as to when it made a bona fide offer to reinstate Galati is specific and responsive to the specification allegation. Therefore, we deny summary judgment as to this allegation of paragraph 1d.

*Paragraph 3:* The specification alleges that the quarterly gross backpay period for discriminatees Koerner, Galczynski, Carluccio, Oliver, and Galati is to be determined by the average earnings for journeymen electricians in the calendar quarter as set forth in the specified sections of appendices B and E through I. The specification alleges further that the quarterly gross backpay for each discriminatee in the first and last quarters of the backpay period was calculated by multiplying the average gross earnings of representative journeymen for the quarter by the number of days in the backpay period for each discriminatee in that quarter and dividing that product by the number of days in the quarter. In its original answer and amended answer, the Respondent partially denied the specification allegation regarding the calculation for quarterly gross backpay to the discriminatees, but admitted that the calculations for the first and last quarters of the backpay period of the backpay specification for Koerner, Galczynski, Carluccio, and Oliver were properly computed as to the days of those quarters that should be included in the calculations. The General Counsel seeks, and we grant, summary judgment with respect to these admissions.

*Paragraph 4:* The specification alleges that the quarterly backpay for discriminatee Seltner is determined by the average earnings for apprentice electricians in the calendar quarter as set forth in the specified sections of appendices C and J. The quarterly gross backpay for Seltner in the first and last quarters of the backpay period was calculated by multiplying the average gross earnings of the representative group who worked as apprentice electricians for that quarter by

the number of days in the backpay period for Seltner and dividing that product by the number of days in the quarter. In its original answer, the Respondent admitted the entire allegation that the quarterly gross backpay for discriminatee Seltner should be determined by the average earnings for apprentice electricians in the calendar quarter. In its amended answer, Respondent partially denied the allegation, asserting that Seltner's backpay "must be reduced in the amount of cash wages paid in lieu of benefits pursuant to federal and state prevailing wage laws . . ." The Respondent admitted that the calculations used to determine the number of days in the first and last quarters of the backpay specification should be included in the calculations. The General Counsel seeks, and we grant, summary judgment with respect to these admissions.

#### ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment be granted as to the allegations in the compliance specification paragraphs 1b and 1c and portions of the compliance specification paragraphs 1a, 1d, 3, and 4. It is ordered that the motion be denied as the reinstatement date alleged in paragraph 1d.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 22 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning those allegations contained in paragraphs 1a, 1d, and 2-10 of the compliance specification as to which summary judgment has not been granted. The judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.